IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 50 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

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O.L. OF AHMEDABAD MFG.& CALICOPRINTING CO.LTD.

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

1. INCOME TAX REFERENCE No. 50 of 1987
OFFICIAL LIQUIDATOR for Petitioner No. 1
MR TANVISH U BHATT for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 10/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this Reference at the instance of the Revenue, the following questions have been referred for our opinion in respect of assessment year 1972-73:-

(i) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in confirming disallowance of Rs.55,441/- ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in confirming disallowance of Rs.1,75,000/- in respect of the amount paid to Bank of India for services and facilities extended in respect of share department which worked upto 30th September, 1970 ?

2. We have heard the learned OL Mr Kuvadia who is present in person and Mr Tanvish Bhatt, learned Standing Counsel for the revenue.

3. As far as question No.1 is concerned, the same pertains to betterment charges. In the case of this very assessee, this very question came up for consideration in 215 ITR 735, wherein this Court held as under:-

"Payment of betterment charges has no direct nexus with the day to day running of a business and the payment of betterment charges is a capital expenditure. Under section 74 of the Bombay Town Planning Act, 1954, the owner has an option to pay the amount of betterment charges in one sum or in annual instalments not exceeding ten. If the owner, the assessee- company had made payment of the betterment charges in one sum, the same could not have been allowed as a deduction in computing the taxable profits of the assessee company. So also, the claim for payment of interest on the instalments of the betterment charges was not an allowable deduction in computing the taxable profits of the assessee company because payment of interest on the instalments of the betterment charges was part and parcel of the net amount payable."

Following the aforesaid decision, our answer to question No.1 is in the affirmative i.e. in favour of the revenue and against the assessee.

4. Coming to the second question, the expenditure of Rs.1,75,000/- was incurred for services and facilities

extended by Bank of India in respect of share department which worked upto 30th September, 1970. This was in connection with the amalgamation w.e.f. 1-4-1971 and since the expenditure pertained to the period prior to the assessment year and prior to amalgamation, the Appellate Assistant Commissioner did not allow the same. The Tribunal confirmed that finding.

5. At the hearing of this Reference, our attention is invited to the decision in the case of this very assessee reported in (2000) 244 ITR 156 wherein the Court held that the issuance of new share certificate or bonds to the members of the transferor - company is a necessary part of the amalgamation of companies and whether such expenses in connection therewith are incurred prior to the date with effect from which the amalgamation is effective or have in fact been incurred thereafter for any reason would not alter the character of the expenditure from capital to revenue.

Following the aforesaid decision, our answer to question No.2 is also in the affirmative i.e. in favour of the revenue and against the assessee.

6. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

zgs/-